

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

STATE OF TEXAS, STATE OF
LOUISIANA

Plaintiffs,

V.

UNITED STATES OF AMERICA, *et al.*

Defendants.

No. 6:21-cv-00016

JOINT ADVISORY ON TRIAL PROCEEDINGS

The parties have conferred about discovery and extra-record evidence, and have reached the following agreements regarding the upcoming bench trial:

1. The parties will not seek any discovery.
2. The parties may take live testimony from witnesses at trial.
3. Plaintiffs will not seek the direct testimony at trial of any current DHS employee, including that of any DHS component, or submit such testimony through affidavit or declaration.
4. The parties agree that the evidentiary materials attached to their previous briefs are authentic, can be admitted without a sponsoring witness, and are presumptively admitted as “part of the trial record and need not be repeated at trial.” Fed. R. Civ. P. 65(a)(2). The parties are also permitted to submit additional extra-record evidence.
5. The parties reserve the right to object that certain evidence should be given no weight, including Defendants’ argument that the Court should not consider any

evidence outside the administrative record when evaluating the merits of claims under the APA, and the parties reserve the right to raise individual objections—including under the Federal Rules of Evidence—to specific documentary submissions or testimony as appropriate.

6. Defendants stipulate that although the memorandum issued by Secretary Alejandro N. Mayorkas titled *Guidelines for the Enforcement of Civil Immigration Law (the “Guidelines”)*, promulgated on September 30, 2021 and effective November 29, 2021, may apply differently to different enforcement decisions, it generally applies to detainers, including the rescission of detainers.
7. Defendants will provide to Plaintiffs by January 10, 2022, the following documents created pursuant to the *Guidelines*’ directive that certain “measures are to be taken before the effective date of this guidance”:
 - a. Documents created to implement the directive that “[e]xtensive training materials and a continuous training program should be put in place to ensure the successful application of this guidance” distributed for use by relevant DHS or ICE employees who make the determinations to place, maintain, or rescind detainers, i.e., Defendants will provide the *Guidelines for the Enforcement of Civil Immigration Law Foundational Training*, subject to appropriate privilege redactions.
 - b. Documents created to implement the directive that “[a] review process should be put in place to ensure the rigorous review of our personnel’s enforcement decisions throughout the first ninety (90) days of implementation of this guidance” that apply to determinations to place,

maintain, or rescind detainers, i.e., Defendants will provide the *Activity Analysis and Reporting Tool 3.0 Quick Reference Guide* and related broadcast message to employees, subject to appropriate privilege redactions.

The parties will confer further about the mechanics and timing of the submission of that evidence, and other scheduling issues, and will file an advisory and/or proposed order on those matters by December 20, 2021, unless otherwise directed by the Court.

Date: December 13, 2021

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on December 13, 2021, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/ Ryan D. Walters
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